IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 35 of 2003

Shri Mahendra Singh Bisht
S/o Prem Singh Bisht
Executive Director of K.M.O.U. Limited
Head Office at Kathgodam
District –Nainital …….. Revisionist

Versus

M/s K.M.O.U. Ltd. Kathgodam
Through Executive Director
Hira Ballabh Tiwari and
Others……. Plaintiff/ respondents.

Shri S.K. Posti, learned counsel for the petitioner.
Shri Manoj Tiwari/ Shri K.N.Joshi learned counsel for the respondents.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. By means of this revision, the applicant has challenged an order dated 29.04.2003 where by the impleadment of the appellant was rejected by the court below.

3. Brief facts of the case are that suit no. 67 of 2001 was instituted by the Kumaon Motor Owners Union Limited through Mr. H.B. Tiwari Vs. Mr. Basant Ballabh Tiwari and others for a declaratory relief that the plaintiff no. 1 Shri H.B. Tiwari has been duly elected as a Executive Director of the Union . further, the permanent injunction has been sought against the defendant no.2 and 3, restraining them not to interfere in the working of the plaintiff no. 1.

4. It appears that the present revisionist has moved an application under order I, rule 3 of Code of Civil Procedure, 1908, for his impleadment as a party with a allegation that he

had been elected on 16.12.2002 as a Executive Director of the Kumaon Motor Owners Union Limited. Learned trial court has rejected the application for impleadment of the revisionist on the ground that this matter has been already concluded on 04.02.2002 in revision No. 68 of 2001.

5. Shri Manoj Tiwari, learned counsel for the respondents made a statement before the Court that the revision may be allowed. If the revisionist is impleaded as a party in the suit in question, he has no objection. In view of this statement, it is not just and proper to keep the revision pending as vide order dated 09.05.2003 of this Court proceedings in suit no. 67 of 2001 has been stayed.

6. Under order I rule 3 of the Code of Civil Procedure, 1908 expression "series of acts or transactions" has been used for the persons who may be joined as defendants, in respect of the right in question, as such the application for impleadment should have been allowed by the learned lower court.

7. Therefore, the revision is allowed and impugned order dated 29.04.2003, rejecting the application under order I, rule 3 of Code of Civil Proceedings is set aside. The said application before the trial court is allowed. The plaintiff/ respondent shall implead the revisionist as defendant within a period of seven days. The interim stay order dated 09.05.2003 is hereby vacated.

(Prafulla C.Pant,J.)

Dt. 24.11.2004
SJ